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6 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
7 REGION 10
8 1200 Sixth Avenue
9 Seattle, Washington

10 In the matter of:)
11 HECKMAN RANCHES, INC. and)
12 HECKMAN CATTLE CO.) DOCKET NO. CWA-10-2000-0128
13 White Bird, Idaho,)
14 Respondents.) COMPLAINT
_____)

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16 **I. AUTHORITIES**

17 1. This administrative complaint for civil penalties ("Complaint") is issued under the
18 authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA" or
19 "Complainant") by Section 309(g)(2)(B) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g)(2)(B).
20 The Administrator has delegated this authority to the Regional Administrator of EPA, Region 10,
21 who in turn has redelegated it to the Director, Office of Water.

22 2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with the
23 "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40
24 C.F.R. Part 22 ("Part 22 Rules"), Complainant hereby proposes the assessment of a civil penalty
25 against Heckman Ranches, Inc. and Heckman Cattle Co. ("Respondents") for the unlawful
26 discharge of pollutants into navigable waters in violation of Section 301(a) of the Act, 33 U.S.C.
27 § 1311(a).
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II. ALLEGATIONS

3. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the “discharge of a pollutant” by any person to navigable waters of the United States, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Section 504(12) of the Clean Water Act, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

4. Each of the Respondents is a corporation duly organized under the laws of the State of Idaho and therefore a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

5. Respondents operate a beef cattle feeding operation that is located adjacent to the confluence of Price Creek and White Bird Creek in Idaho County, Idaho.

6. Respondents’ beef cattle feeding operation contains a number of unvegetated, fenced beef cattle pens and barns (“White Bird Creek Facility”) in which cattle are stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.

7. Neither crops, vegetation, forage growth, nor post-harvest residues are sustained over any portion of the White Bird Creek Facility.

8. The White Bird Creek Facility is an “animal feeding operation” as that phrase is defined in 40 C.F.R. § 122.23(b)(1).

9. On March 3, 2000, EPA conducted an aerial overflight of the White Bird Creek Facility. At the time of this overflight, the White Bird Creek Facility confined more than 300 slaughter or feeder cattle, and these animals had direct access to White Bird Creek and Price Creek.

10. On March 15, 2000, EPA conducted an NPDES inspection of the White Bird Creek Facility.

1 11. At the time of the March 15, 2000 NPDES inspection, the White Bird Creek Facility
2 confined more than 300 slaughter or feeder cattle.

3 12. At the time of the March 15, 2000 NPDES inspection, animal wastes and other
4 pollutants were being discharged directly into White Bird Creek and Price Creek. White Bird
5 Creek and Price Creek originate outside of and pass over, across, or through the White Bird Creek
6 Facility and come into direct contact with the animals confined in the White Bird Creek Facility.

7 13. The White Bird Creek Facility does not discharge only in the event of a 25-year,
8 24-hour storm event.

9 14. The White Bird Creek Facility is a “concentrated animal feeding operation” as that
10 phrase is defined in 40 C.F.R. Part 122, Appendix B and used in Section 502(14) of the Act, 33
11 U.S.C. § 1362(14).

12 15. White Bird Creek and Price Creek are tributaries of the Salmon River. The Salmon
13 River is a tributary of the Snake River, which is an interstate water.

14 16. White Bird Creek and Price Creek are each “navigable waters” as defined by
15 Section 502(7) of the Act, 33 U.S.C. § 1362(7), and “waters of the United States” within the
16 meaning of 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

17 17. The animal wastes discharged from the White Bird Creek Facility were and
18 contained “pollutant[s]” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

19 18. Upon information and belief, cattle from the White Bird Creek Facility have come
20 into direct contact with White Bird Creek and Price Creek each day they have been present at the
21 facility. Each day in which cattle have come into contact with White Bird Creek and Price Creek
22 has resulted in discharges of animal wastes and other pollutants to waters of the United States.

23 19. The animal waste discharges described in Paragraph 18 above constituted
24 “discharge[s] of pollutants” within the meaning of Section 502(12) of the Act, 33 U.S.C. §
25 1362(12), from a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C.
26 § 1362(14).

1 20. At the time of the discharges of pollutants described in Paragraph 18 above,
2 Respondents had not obtained coverage under an NPDES permit for the discharges from the
3 White Bird Creek Facility.

4 21. The discharges of pollutants described in Paragraph 18 above were unauthorized
5 discharges of pollutants to waters of the United States and constitute no less than thirteen (13)
6 violations of Section 301 of the Act, 33 U.S.C. § 1311(a). Consequently, pursuant to Section
7 309(g)(2)(B) of the Act, and 40 C.F.R. Part 19, the Respondents are jointly and severally liable for
8 the administrative assessment of civil penalties in an amount not to exceed \$11,000 per violation
9 for each day during which the violation continues, up to a maximum of \$137,500.

11 **III. PROPOSED PENALTY**

12 22. Based on the foregoing allegations of violation, Complainant hereby proposes that
13 the Presiding Officer assess an administrative penalty against Respondents, for the violations
14 cited above, in the amount of FORTY THOUSAND DOLLARS (\$40,000).

15 23. The proposed penalty amount was determined by Complainant in consideration of
16 the nature, circumstances, extent, and gravity of the violation, and, with respect to the
17 Respondents, ability to pay, prior history of violations, degree of culpability, economic benefit
18 and savings resulting from the violation, and other appropriate factors to the extent the
19 information is available for such determinations.

20 24. The nature, circumstances, extent, and gravity of the violations described above
21 are significant. The violations resulted in the discharge of manure-laden animal waste to waters
22 of the United States. Samples of the discharges associated with White Bird Creek Facility
23 contained significant levels of both fecal coliform and *Escherichia coli* (*E. coli*) bacteria. The
24 presence of these bacteria indicates the possible presence of a number of pathogens (such as *E.*
25 *coli* 0157:H7 and *Salmonella*) as well as parasites (such as *Cryptosporidium*). Illnesses caused
26 by these microorganisms can result in gastroenteritis, fever, kidney failure, and even death.
27 Animal wastes are also typically high in nutrients which can cause decreased oxygen levels in
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1 receiving waters. These decreased oxygen levels can adversely impact many species of fish
2 indigenous to the Pacific Northwest (including salmon species listed as endangered or threatened
3 under the Endangered Species Act) during their developmental stages as well as at maturity.

4 25. By avoiding or delaying the costs associated with implementing waste
5 management controls that would have ensured compliance with the Clean Water Act,
6 Respondents have realized economic benefit as a result of the violations alleged above.

7 26. Based on the information available to EPA regarding Respondents' financial
8 condition, Respondents appear able to pay a civil penalty of \$40,000. Should Respondents
9 submit information substantiating an inability to pay this amount, the proposed penalty may be
10 reduced to reflect this inability.

11 12 **IV. OPPORTUNITY TO REQUEST A HEARING**

13 27. Respondents have the right to file an Answer requesting a hearing on any material
14 fact contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon
15 request, the Presiding Officer may hold a hearing for the assessment of these civil penalties,
16 conducted in accordance with the provisions of the Part 22 Rules and the Administrative
17 Procedures Act, 5 U.S.C. § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

18 28. Respondents' Answer, including any request for hearing, must be in writing and
19 must be filed with:

20 Regional Hearing Clerk
21 U.S. Environmental Protection Agency, Region 10
22 1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

23 **V. FAILURE TO FILE AN ANSWER**

24 29. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondents
25 must file a written Answer (or separate Answers) to this Complaint with the Regional Hearing
26 Clerk within thirty (30) days after service of this Complaint.

1 30. In accordance with 40 C.F.R. § 22.15, Respondents' Answer(s) must clearly and
2 directly admit, deny, or explain each of the factual allegations contained in this Complaint with
3 regard to which Respondents have any knowledge. Respondents' Answer(s) must also state: (1)
4 the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the
5 facts which Respondents intend to place at issue; and (3) whether a hearing is requested. Failure
6 to admit, deny, or explain any material factual allegation contained herein constitutes an
7 admission of the allegation.

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9 **VI. INFORMAL SETTLEMENT CONFERENCE**

10 31. Whether or not Respondents request a hearing, Respondents may request an
11 informal settlement conference to discuss the facts of this case, the proposed penalty, and the
12 possibility of settling this matter. To request such a settlement conference, Respondents should
13 contact:

14 R. David Allnutt
15 Assistant Regional Counsel
16 U.S. Environmental Protection Agency, Region 10
17 1200 Sixth Avenue, Mail Stop ORC-158
18 Seattle, Washington 98101
19 (206) 553-2581

20 32. Note that a request for an informal settlement conference does not extend the thirty
21 (30) day period for filing a written Answer to this Complaint, nor does it waive Respondents' right
22 to request a hearing.

23 33. Respondent is advised that Section 22.8 of the Part 22 Rules prohibits any *ex parte*
24 (unilateral) discussion of the merits of these or any other factually related proceedings with the
25 Administrator, the Environmental Appeals Board or its members, the Regional Administrator, the
26 Presiding Officer, or any other person who is likely to advise these officials on any decision in
27 this case.
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VII. RESERVATIONS

34. Neither assessment nor payment of an administrative civil penalty pursuant to this Complaint shall affect Respondents' continuing obligations to comply with: (1) the Clean Water Act and all other environmental statutes; (2) the terms and conditions of all applicable Clean Water Act permits; and (3) any Compliance Order issued to Respondent under Section 309(a) of the Act, 33 U.S.C. § 1319(a), concerning the violations alleged herein.

Dated this ____ day of _____, 2000

Randall F. Smith
Director
Office of Water
U.S. EPA Region 10

CERTIFICATE OF SERVICE

I certify that the foregoing "Complaint" was sent to the following persons, in the manner specified, on the date below:

Original and one copy, hand-delivered:

Mary Shillcutt, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

Copy, together with a cover letters and copy of the Part 22 Rules, by certified mail, return receipt requested:

Donovan Heckman
President, Registered Agent
Heckman Ranches, Inc
Heckman Cattle Co.
P.O. Box 87
White Bird, Idaho 83554

Dated: _____

Cindy Phung
U.S. EPA Region 10